

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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NOV - 3 2003

Federal Communications Commission  
Office of the Secretary

In the Matter of )  
)  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations )  
(Mt. Vernon and Okawville, Illinois) )  
)  
Reclassification of License )  
of Station KEZK-FM, St. Louis, Missouri )

MM Docket No. 03-196  
RM-10626

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OCT 29 2003

Federal Communication Commission  
Bureau / Office

To: Chief, Allocations Branch

**COMMENTS IN SUPPORT OF NOTICE OF PROPOSED RULEMAKING**

Benjamin Stratemeyer ("Mr. Stratemeyer"), the licensee of WIBV(FM), Channel 271B1, Mount Vernon, Illinois, by its undersigned attorney and in response to the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding, MB Docket No. 03-196 (released September 8, 2003) (the "*NPRM*"), hereby files these Comments in support of the *NPRM*'s proposal to reallocate Channel 271B1 from Mount Vernon, Illinois to Okawville, Illinois and to modify the license to WIBV(FM) to specify Okawville, Illinois as its community of license.

**Discussion**

1. On June 21, 2002, Mr. Stratemeyer filed a Petition for Rulemaking ("Petition") requesting that the Commission initiate a proceeding to amend the FM Table of Allotments as proposed in the *NPRM*. In the Petition, Mr. Stratemeyer demonstrated that the proposed change in WIBV(FM)'s community of license is in the public interest because the proposal a) complies with the Commission's technical requirements with the reclassification of KEZK-FM to a Class C0 facility, b) would provide the community of Okawville with its first local aural transmission

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service, and c) would not deprive Mt. Vernon of its only local broadcast transmission service as it will retain four local transmission services.

2. In response to Mr. Stratemeyer's Petition, the Commission instituted the instant rulemaking proceeding to more fully consider Mr. Stratemeyer's proposal. Mr. Stratemeyer hereby incorporates by reference his Petition.<sup>1</sup> Mr. Stratemeyer also reiterates his expression of interest in the reallocation of Channel 271B1 from Mt. Vernon to Okawville, Illinois and the modification of WIBV(FM)'s license to specify operation at Okawville. If the proposal set forth in this proceeding is adopted, Mr. Stratemeyer will expeditiously submit a minor change application for a construction permit specifying the new facility and, once its construction permit is granted, will proceed promptly to file an application for a covering license for the station licensed to Okawville.

3. As proposed in the *NPRM*, Mr. Stratemeyer also reiterates his request for the reclassification of KEZK-FM, St. Louis, Missouri, licensed to Infinity Radio Subsidiary Operations, Inc. ("Infinity") from Channel 273C to Channel 273C0 in order to comply with spacing requirements upon the reallocation of Channel 271B1 from Mt. Vernon to Okawville, Illinois. On January 17, 2003, an Order to Show Cause was released by the Commission by which Infinity had 30 days to respond to the change in classification. Infinity did not respond to the Order. Thus, the Commission determined that KEZK-FM will be reclassified as part of the instant proceeding. *See* Footnote 4 of *NPRM*.

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<sup>1</sup> A copy of the Petition is attached hereto for reference.

**Conclusion**

As Mr. Stratemeyer has previously demonstrated, grant of the proposal set forth in the *NPRM* will result in a preferential arrangement of allotments as it will permit WIBV(FM) to provide a first local aural transmission service to a community currently without such service without depriving Mt. Vernon, Illinois of local transmission service. Moreover, the proposal is consistent with all of the Commission's rules, regulations, and policies. For these reasons, Mr. Stratemeyer urges the Commission to adopt the *NPRM*'s proposal to reallocate Channel 271B1 from Mt. Vernon to Okawville, Illinois.

Respectfully submitted,

**BENJAMIN STRATEMEYER**

By:   
Dawn M. Sciarrino

His Attorney

SHAW PITTMAN LLP  
2300 N Street, NW  
Washington, DC 20037-1128  
(202) 663-8000

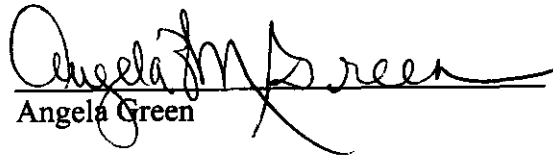
Dated: October 29, 2003

**CERTIFICATE OF SERVICE**

I, Angela Green, a secretary in the law offices of Shaw Pittman LLP, hereby certify that on this 29 day of October, 2003, a copy of the foregoing "**COMMENTS IN SUPPORT OF NOTICE OF PROPOSED RULEMAKING**" was sent first-class mail, to the following:

\*John A. Karousos  
Assistant Chief  
Audio Division, Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 7-C485  
Washington, D.C. 20554

Infinity Radio Subsidiary Operations Inc.  
2000 K Street, N.W.  
Suite 725  
Washington, D.C. 20006

  
Angela Green

\*Via Hand Delivery

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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C.

In the Matter of )

Amendment of Section 73.202(b) )

Table of Allotments )

FM Broadcast Station )

(Mount Vernon, Illinois and )

Okawville, Illinois) )

MM Docket No. 2002-\_\_\_\_\_

RM-\_\_\_\_\_

**RECEIVED**

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

JUN 21 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**PETITION FOR RULE MAKING**

Benjamin Stratemeyer ("Mr. Stratemeyer"), the licensee of FM broadcast station WIBV, Mount Vernon, Illinois ("WIBV"), by its attorneys, and pursuant to Sections 1.401(a), 1.420(i) and 73.202(b) of the Commission's Rules and Regulations, hereby petitions the Commission to amend its FM Table of Allotments, Section 73.202(b) of the Commission's Rules, by reallocating Channel 271B1 from Mount Vernon, Illinois to Okawville, Illinois and modifying WIBV's license accordingly.

**I. PRELIMINARY STATEMENT**

Under Section 1.401 of the Commission's Rules, any interested party may petition the Commission to amend its rules or regulations. 47 C.F.R. § 1.401(a) (2001). By filing this Petition, Mr. Stratemeyer is requesting the Commission to amend its FM Table of Allotments with respect to the communities of Mount Vernon and Okawville. 47 C.F.R. § 73.202(b) (2001). As shown below, because this proposal would result in a preferential new arrangement of allotments under the Commission's guidelines, the public interest will be served by amending the FM Table of Allotments as requested herein and by modifying WIBV's license accordingly.

## II. DISCUSSION

### A. Mr. Stratemeyer's Proposal Is Not Subject to Any Competing Expressions of Interest

This Petition is also being filed pursuant to Section 1.420(i) of the Commission's Rules which allows the FCC to modify a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest, where, as here, the proposed allotment is mutually exclusive with the station's present assignment. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Modification Report and Order"). As demonstrated by the Engineering Exhibit attached hereto as Exhibit A, the requested reallocation of Channel 271B1 to Okawville, and the proposed modification of WIBV's license, are mutually exclusive with WIBV's authorized facilities. See FCC File No. BLH-20010216AAN, granted on March 26, 2001. Accordingly, the Commission may reallocate Channel 271B1 without granting an opportunity to other parties to file competing expressions of interest.

### B. Mr. Stratemeyer's Proposal Will Meet the FCC's Separation Requirements

Mr. Stratemeyer proposes to serve Okawville from a tower located at NL 38° 21' 56.0", WL 89° 21' 2.0". See Exhibit A. As set forth in Exhibit A, the proposed allotment reference site is located 88.11 kilometers from second adjacent Class C station KEZK-FM, St. Louis, Missouri. This falls short of the 105 kilometer minimum distance between second-adjacent Class B1 and Class C stations is 105 kilometers, see 47 C.F.R. § 73.207 (2001), but would comply with the 87 kilometer Class B1/Class C0 spacing requirement. Because KEZK-FM's antenna is between 300 and 451 meters in height above average terrain, the station is subject to reclassification to a

Class C0 facility. See 47 C.F.R. § 73.3573 (2001). Such reclassification is necessary to prevent KEZK-FM being short-spaced to the instant proposal. As there are no alternate channels available for the proposed Okawville Class B1 facility, see Exhibit A, this Petition serves to initiate the reclassification procedure with respect to KEZK-FM. From the proposed reference allotment site, WIBV will put the requisite signal over its proposed community of license, and upon reclassification of KEZK-FM to a Class C0- facility, it will also comply with the FCC's separation requirements for FM stations.

**C. Mr. Stratemeyer's Proposal Meets the FCC's Prerequisites and FM Allotment Priorities**

The Commission has set forth two prerequisites before it will approve a city of license change request: (1) the former community shall not be deprived of its only existing local aural transmission service; and (2) the modification will result in a "preferential arrangement of allotments" under current FM allotment priorities. Modification Report and Order, 4 FCC Rcd at 4874. The Commission's FM allotment priorities are, in descending order of importance: (a) provision for first full-time aural reception service; (b) provision for second full-time aural reception service; (c) provision for first local transmission service; and (d) provision for other public interest factors. Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

**1. First Prerequisite: Reallotment of WIBV Will Not Deprive Mount Vernon of its Only Existing Aural Broadcast Service**

In addition to WIBV, commercial radio stations WMIX-FM and WMIX(AM) and non-commercial educational stations WAPO(FM) and WBMV(FM) are also licensed to serve Mount

Vernon.<sup>1</sup> Therefore, this proposed allotment satisfies the first prerequisite as Mount Vernon would continue to maintain local transmission services.

**2. Second Prerequisite: The Relocation of WIBV to Okawville  
Constitutes a Preferential New Arrangement of  
Allotments Under Established Commission Priorities**

**a. The First Two FM Allotment Priorities -- First and Second  
Full-Time Aural Reception Services -- are not Material**

As shown in Exhibit A the entire WIBV gain area created by the relocation and reallocation proposed herein currently receives at least two full-time aural services. Accordingly, the first two allotment priorities set forth by the Commission are not material to a public interest determination in this proceeding. In addition, the loss area will continue to receive reception from a minimum of three and a maximum of twelve aural services, depending on the area. Thus, no white or gray areas will be served or created by the instant proposal.

**b. The Third Allotment Priority, First Local Transmission  
Service, is Decisionally Favorable in this Proceeding**

The Commission's third allotment priority is material and decisional in this case since Mr. Stratemeyer's proposal to change WIBV's community of license would provide Okawville with its first local transmission service, while Mount Vernon would retain four local transmission services.

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<sup>1</sup> The Commission has held that for reallocation purposes, noncommercial stations qualify as local aural transmission services. See, e.g., Brunswick and Waycross, Georgia (1992); Valley Broadcasters, Inc., 5 FCC Rcd 2785 (1990).



**i. Okawville is a "Community" Under  
The Commission's Allotment Criteria**

In determining whether a locality is a "community" for allotment purposes, the Commission looks to whether the locality has "social, economic, cultural, or governmental indicia" that identify it as a community. See Avon, North Carolina, 14 FCC Rcd 3939, 3940 (1999). It is sufficient to demonstrate that the locality is "commonly regarded as a distinct group." The Commission has held that "[e]xamples of objective indications of community status include the existence of political, commercial, social, and religious organizations and services in the community. See In re Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Thermopolis and Story, Wyoming), DA 01-1543, MM Docket No. 00-159, RM-9889 at para. 5 (2001). Okawville exhibits the community indicia to which the Commission has looked in determining whether a community deserves to have its own first local broadcast service. See, e.g., Arcadia and Fort Meade, Florida, MM Docket No. 97-159 (Released July 18, 1997); See Exhibit B.

Okawville is a rural community located in Washington County, Illinois that was incorporated in 1870 and has a population of approximately 1,355 residents according to the 2000 Census. The community is listed in the 2000 Rand McNally Commercial Road Atlas and appears on the Atlas' Illinois road map.

The community, which is home to Illinois State Senator Dave Luechtefeld, is governed by an elected mayor and six board members. Okawville has a Chamber of Commerce as well as its own police and volunteer fire departments, which are housed in the community's Village Hall, along with Okawville's street and water departments. The Village Hall office is staffed by a Village Secretary. In addition, Okawville operates its own water distribution and collection

system as well as a weekly general refuse service. It also has its own weekly newspaper, The Okawville Times, which has won awards for Best Local News Coverage, Best Sports Coverage, and General Excellence.

Okawville is a historic German community with a unique heritage and strong sense of civic pride. The village, affectionately known as the "Little Hot Springs of Illinois", has long enjoyed a reputation as a health resort because of its mineral waters. Okawville's sole remaining mineral spa, the Original Mineral Springs Hotel & Bath, is a National Registry Property that has been famed for its mineral water baths for 125 years. Starting in the late 19<sup>th</sup> century, the mineral baths at the hotel, which started as a small bathhouse, were used to treat rheumatism, arthritis, and other diseases, leading to the popular slogan: "Okawville – Where Rheumatism Meets Its Waterloo." According to legend, around that time, a course of therapy at the hotel's wells miraculously cured a hopeless invalid who could not be offered any hope by the area's best doctors of the day. The town then became famous for its healing waters, and today, the facility consists of a century old hotel, restaurant, and spa that still attract people because of its healing waters and relaxing atmosphere, and it is host to various community events.

Okawville is also home to the Heritage House Museum ("HHM"), a non-profit organization that maintains three unique historical properties. Last year, the HHM was awarded a \$39,139 tourism grant from the State of Illinois for renovations. The first HHM historical property is the Frank Schlosser Home. This home is on the National Register of Historic Places and portrays the ethic of a family of German heritage, the importance of family ties, and a desire to preserve the past. The second HHM historical property is the Joseph Schlosser Home, which is the last surviving Old World style house in Okawville and houses the offices of the Heritage House Museum and the Okawville Chamber of Commerce. Finally, the HHM maintains the Dr.

Poos Home and Medical Museum. This was the home of Dr. Poos, a physician who was lured to the community by the healing springs the late 19<sup>th</sup> century and made his career as a village physician and druggist.

This historic community serves the needs of its residents through a variety of commercial, social, and religious organizations and services.

Okawville is served by many commercial organizations and services. It is home to insurance providers, banks, and financial institutions, including the Chaney and Karch Insurance Group, Inc., Insurance Planning and Management, Lois Obermeier Insurance, State Farm Insurance, The Old Exchange National Bank of Okawville, and the First National Bank. It is also served by myriad retail merchants, such as Annette's Flowers-Gifts, Country Lace and Holiday Shop, Wolff's Variety Store, Green's Decorating, Simonton's Orchards, Spring Valley Golf Course and Pro Shop, Streuter Chevrolet, Inc., Weeke Sales and Service, Inc., Lyle's Auto Body, and Ralph Schrader Body Shop. In addition, it is served by many construction and equipment providers, such as Haier Plumbing & Heating, Obermeier Truck Service, Okawville Electric Inc., Okawville Equipment Co., Okawville Farmer's Elevator Co., Quad County Ready Mix, Reichman Brothers Farm Implements, Scott Banzai Homes, and U.S. Pallett Supply, Inc. Okawville also has many restaurants and hotels, including the Spring Valley Grille, Wink's Bar & Restaurant, the Hen House Restaurant, Pizza Man, One Stop/Burger King, Dairy Queen of Okawville, The Original Springs Hotel & The Boilermaker Restaurant, McIlwain Mansion Bed & Breakfast, and the Okawville Super 8 Motel, and its residents are served by two attorneys, a funeral home, a hair salon, a barber shop

The community also provides for the medical needs of its residents through a Family Medical Center and a pharmacy, which are located in the Okawville Medical Center, as well as a

chiropractor, and the Okawville Senior Center, which serves as a home base for a variety of programs for the elderly, including educational classes, day trips, shopping trips, health screenings, support groups and seasonal celebrations and parties. The Senior Center also provides transportation, meal, and information and referral services to Okawville residents.

Okawville also meets the educational needs of its community by serving as the seat of the West Washington County School District #10 and through its Okawville Jr. Sr. High School (Grades 7-12) and Okawville Grade School (Grades K-6). These schools offer gifted, remedial, and special education services, have music programs, and have won state championships in athletics, such as baseball, softball, and basketball. In addition, Okawville is home to the Immanuel Lutheran School (Grades K-8 and preschool) and the Immanuel Lutheran Wee Care daycare service.

To meet the recreational needs of its residents, Okawville offers a public 18-hole golf course, Spring Valley Golf Club and Estates, which hosts various golf benefits for local businesses and organizations. The community also is home to a Putt N' Times Miniature Golf Course. In addition, the community, which has been described as "the quintessential basketball town", sends a boys' basketball team to Texas every spring to participate in a Little Dribblers Continental Division Basketball Tournament. The team is enthusiastically supported by members of the community who make the journey with the team and create their own cheering section which is characterized by a plethora of orange Okawville shirts. The team's efforts are also supported by the community through its participation in and support of the team's various fundraisers, including a golf tournament, candy sales, and two of its own basketball tournaments.

Okawville also offers an Okawville Community Youth Association, which is a local non-profit organization that provides sports programs including softball, baseball, flag football,

soccer, and maintains playing fields and park grounds, for children of the community. The Association has received a grant from the Illinois Department of Natural Resources to expand its offerings to include tennis, basketball, and rollerblade courts, a soccer field, and a walking path.

Okawville is served by many civic organizations, including the Lions, the Knights of Columbus, the American Legion, Girl Scout and Boy Scout Troops, Home Extension, 4-H Groups, and several church-sponsored youth organizations. In addition, the community boasts the Okawville Community Club Park, which houses several picnic areas, including several large pavilions, a playground, and a large multi-use building, and which hosts local auctions, indoor and outdoor dances, community dinners, and the community's annual Okawville Fair and Wheat Festival. It also opens the high school's library to the public several evenings a week and on Saturdays.

In addition, the residents of Okawville's community come together to participate in the many cultural events organized and sponsored by the village. For example, Okawville takes its residents on a trip back in time through Heritage Days at the Heritage House Museum on the Saturday and Sunday before Father's Day. It also sponsors the annual Illinois Heritage Art and Wine Festival at the Community Youth Association Park on the Saturday before Father's Day. This event includes wine tasting, an art show, and live music for community residents. The community also sponsors the Okawville Fair and Wheat Festival each year on the second weekend after Labor Day. This family event, includes carnival rides, games, food, and musical entertainment with a farm, gardening, and homemaking exhibit area as well as Queen pageant. In addition, Okawville hosts a Country Christmas Stroll and House Tour during the first weekend of December. This event includes an open house at downtown businesses with prizes

awarded and a house tour which includes 4 private homes, 3 historic homes, and a church, as well as a large crafters area, Festival of Trees exhibit, and a Live Nativity Pageant.

The residents of Okawville congregate to meet spiritual needs at five Christian churches located in Okawville, including the Faith Fellowship Foursquare Church, the First Baptist Church - Okawville, the Immanuel Lutheran Church, St. Barbara's Catholic Church, St. Peter's United Church of Christ, and the United Methodist Church.

Okawville and related community entities receive county funding to improve community services and the quality of life of Okawville residents. For example, Washington County recently allocated a total of \$913,908 to help Okawville improve sewer and wastewater services, make park and ballpark improvements, and purchase fire equipment, police squad cars, tornado sirens, a backhoe, and computers and equipment to be used by Okawville High School.

As shown herein, because Okawville possesses the requisite "social, economic and cultural components that are commonly associated with community status," see Semora, North Carolina, 5 FCC Rcd 934 (1990), Okawville should be considered a "community" worthy of its own first local transmission service.

**ii. WIBV Would Not be Moving Into a New Urbanized Area**

The change in WIBV's city of license to Okawville does not implicate the Commission's Urbanized Area "presumption." When an applicant proposes an FM allotment to a community based on a first local service preference, and that community is located in an Urbanized Area, or the 70 dBu contour of the station which is the subject of the rulemaking covers 50% or more of an Urbanized Area, a presumption of interdependence between the community and the

Urbanized Area is created.<sup>2</sup> See Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). If the presumption of interdependence is not rebutted, the community is credited with all the local transmission services licensed to communities within the Urbanized Area. Id. Exhibit A shows that Okawville is not located in an Urbanized Area and that the 70 dBu service from the proposed Okawville Channel 271B1 allotment will not cover any portion of a US Census designated Urbanized Area. Thus, no "Tuck" analysis is required in support of the Mr. Stratemeyer's reallocation plan. Okawville should not be credited with the aural broadcast transmission services licensed to the communities in any Urbanized Area, and Okawville properly deserves a first local service preference.

**C.     The Fourth Allotment Priority, the Public Interest Factor, is Served by the Proposed Move to Okawville**

The Commission has already concluded that it is in the public interest to award a community its first local aural transmission service. See Newnan and Peachtree, Georgia, 7 FCC Rcd 6307, 6308 (1992). Thus, by allotting FM Channel 271B1 to Okawville, the public interest will be served by providing it with a locally-based transmission service that otherwise would not exist. Further, providing Okawville with its own broadcast service would serve the public interest by enhancing its current efforts toward enhanced vitalization and overall improvement of the community.

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<sup>2</sup>The Census Bureau defines an Urbanized Area as consisting of a central community and adjacent densely settled areas that together have a minimum of 50,000 persons. See Section 307(b) Preferences Within Metropolitan Areas, 48 Fed. Reg. 19,428 (1983).

**D. Mr. Stratemeyer's Declaration of Intent**

If Mr. Stratemeyer's proposal set forth herein is adopted, he intends to promptly file with the Commission the appropriate application for Channel 271B1 at Okawville, Illinois. If this application is granted, Mr. Stratemeyer intends to expeditiously construct the authorized WIBV facilities.

**III. CONCLUSION**

Based on the foregoing, Benjamin Stratemeyer respectfully requests the Commission to promptly initiate the Rule Making requested herein to reallocate Channel 271B1 from Mount Vernon, Illinois to Okawville, Illinois and to modify WIBV's license accordingly.

Respectfully submitted,

**BENJAMIN STRATEMEYER**

By. 

Clifford M. Harrington  
Dawn M. Sciarrino  
Colette M. Capretz

Its Attorneys

SHAW PITTMAN LLP  
2300 N Street, N.W.  
Washington, D.C. 20037-1128  
(202) 663-8000

Dated: June 21, 2002